

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 11851 of 2005****For Approval and Signature:****HON'BLE MR JUSTICE AKIL KURESHI**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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BRAHMAKSHATRIYA CO.OP HSG. SOCIETY LTD - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR AK CLERK for Petitioner No(s).: 1.
 MR PR ABICHANDANI, AGP for Respondent No(s).: 1,2.
 RULE SERVED BY DS for Respondent No(s).: 3.

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CORAM : HON'BLE MR JUSTICE AKIL KURESHI**Date : 02/08/2005****ORAL JUDGMENT**

In the present petition, the petitioner has challenged the action of the respondents in seeking to levy land revenue with respect to the land of the petitioner-society for the year 2004-05 and onwards. It

is the case of the petitioner that the petitioner-society is in existence long before 1.8.81 and all members of the society had put up construction for residential use on the allotted plots prior to 1.8.81. It is the case of the petitioner-society that the members have constructed their residential houses and are using the same for residential purpose long before 1.8.81. The petitioner has produced certain material on record to establish these averments. It is the case of the petitioner that in view of the fact that the petitioner-society has been in existence prior to 1981 and the plots allotted to the members have already been put to residential use prior to the said date, the land belonging to the society is not liable to any assessment in view of the Gujarat Land Revenue (Amendment) Rules 1981. Despite the said position, the petitioner received a notice dated March 2005 under section 152 of the Bombay Land Revenue Code demanding an amount of Rs.1,64,488 by way of land revenue and an amount of Rs.43,161/- as education cess. Thus total demand of Rs.2,07,649 was raised against the petitioner for the year 2004-05. The petitioner resisted the said demand by corresponding with the respondent authorities. However, a final notice dated 31st May 2005 was issued to the petitioner calling

upon to pay the amount in question on or before 25.6.2005 failing which the society was threatened with attachment of the property and auction thereof. The petitioner, therefore, preferred the present petition in which after initially issuing notice, by the order dated 5.7.05 rule was made returnable on 19.7.05.

2. Learned advocate for the petitioner submitted that the issues arising in the present petition are squarely covered by a decision of the learned single Judge dated 1.8.2002 passed in Special Civil Application No.3840/93. In the said decision, while allowing the petition, the learned single Judge upheld the contention of the petitioner therein that no levy of non-agricultural assessment can be charged from the society which is using the land prior to 1981 in view of the proviso to clause 3 of the notification dated 21st January 1982. In the said decision, the learned single Judge was pleased to restrain the respondents from fixing, levying and collecting any assessment of the land belonging to the petitioner Society therein, which land was using prior to 1981 for the assessment 1993-94 and thereafter. The cut off line of the assessment 1993-94 was fixed on account of the fact that the petition was filed in the year 1993.

The request of the petitioner therein for refund of the amount already paid since 1981 was, however, turned down in view of the fact that payment was made voluntarily without any objection. The learned advocate for the petitioner requested that the above decision of the learned single Judge be followed in the present case.

3. Learned AGP Mr. Abichandani appearing for the respondents could not point out any distinguishing features between the two cases. He, however, submitted that Letters Patent Appeal against the judgment of the learned single Judge dated 1.8.2002 has been admitted by a Division Bench of this Court. Though it is true that the Division Bench has admitted the LPA against the decision of the learned single Judge, Civil Application for stay filed by the State Government came to be rejected by an order dated 8.10.04. The Division Bench while rejecting the Civil Application observed that the applicant i.e. State government has not brought out in the application or during the course of the arguments that the land was not put to residential use before 1st August 1981. The Civil Application was, therefore, rejected.

4. In the present case, I find that the decision of the learned single Judge dated 1.8.2002 is applicable since the facts in the both the petitions are identical. The petitioner has been contending that the land belonging to the society have been used for residential purpose by the members long before 1.8.81. There is no rebuttal evidence produced by the respondents. In that view of the matter, as held by the learned single Judge in the decision dated 1.8.2002, the petitioner is not liable to pay land revenue for the land in question.

5. In that view matter, the demand for payment of land revenue raised for the year 2004-05 is quashed and set aside. It will also be not open for the respondent to demand and levy any land revenue with respect to the subject lands for the subsequent years also. Following the decision of the learned single Judge, I find that the petitioner has not made out any case for grant of refund and such a prayer is therefore rejected. This order is being passed on the basis of the decision of the learned single Judge noted herein-above and in view of the fact that though Letters Patent Appeal against the said decision is admitted, Civil Application seeking stay of the decision of the learned single Judge has been

rejected by the Division Bench.

6. In the result the petition is allowed as mentioned above. Rule is made absolute to the aforesaid extent with no order as to costs.

(Akil Kureshi, J.)

(vjn)